

# MISSOURI COURT OF APPEALS WESTERN DISTRICT

**DYLAN KESLER,**

**Appellant,**

**v.**

**THE CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,**

**Respondents.**

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DOCKET NUMBER WD79703

**Date: April 18, 2017**

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Appeal from:  
Boone County Circuit Court  
The Honorable Kevin Crane, Judge

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Appellate Judges:  
Division 4: Mark D. Pfeiffer, Chief Judge, Presiding, Lisa White Hardwick and Gary D. Witt, Judges

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Attorneys:  
George S. Smith and Andrew G. Heitmann, Columbia for appellant.  
Paul R. Maguffee and Nicholas S. Beydler, Columbia for respondents.

# **MISSOURI APPELLATE COURT OPINION SUMMARY**

## **COURT OF APPEALS -- WESTERN DISTRICT**

**DYLAN KESLER**

**Appellant,**

**v.**

**THE CURATORS OF THE UNIVERSITY OF MISSOURI, et al.,**

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Boone County

Before Division 4: Mark D. Pfeiffer, Chief Judge, Presiding, Lisa White Hardwick and Gary D. Witt, Judges

Dylan Kesler appeals the circuit court's entry of summary judgment in favor of the Curators of the University of Missouri ("the University"); R. Bowen Loftin, former chancellor of the University of Missouri-Columbia ("MU"); Mark Ryan, Director of MU's School of Natural Resources; Joshua Millspaugh, a professor in MU's Department of Fisheries and Wildlife Sciences; and Jack Jones, chair of MU's Department of Fisheries and Wildlife Sciences (collectively, "Respondents"), on his petition for damages for wrongful discharge, breach of the covenant of good faith and fair dealing, tortious interference with an employment expectancy, prima facie tort, and civil conspiracy. Kesler contends the court erred in entering summary judgment because Respondents' summary judgment motion was procedurally deficient and his claims were not barred by res judicata or collateral estoppel and did not fail as a matter of law.

**AFFIRMED.**

Division Four holds:

(1) The circuit court did not err in entering summary judgment in favor of Respondents because their motion substantially complied with Rule 74.04(c)(1). There were no disputed factual issues, and Respondents apprised Kesler and the court of the specific bases on which they claimed to be entitled to summary judgment.

(2) The circuit court did not err in entering summary judgment in favor of the University, Ryan, and Loftin because res judicata barred Kesler's claims against them, in that all of the claims that Kesler raised in this lawsuit, *Kesler II*, arose out of the same acts or transactions as the claims that were adjudicated in *Kesler I*, a prior lawsuit that was decided adversely to him. Application of res judicata was not erroneous because Kesler's claims in *Kesler II* had accrued before *Kesler I*, and nothing prevented him from bringing them along with his other claims in *Kesler I*; *Kesler II* did not allege violations of continuing contractual duties that occurred after *Kesler I* concluded; Kesler was not prevented in *Kesler I* from discovering facts relevant to *Kesler II*; and the record contains no evidence that the court in *Kesler I* "expressly" reserved his right to bring a his *Kesler II* claims in a subsequent action.

(3) The circuit court did not err in entering summary judgment in favor of Millspaugh and Jones because collateral estoppel barred Kesler's claims against them. Kesler's claims in *Kesler II* against Millspaugh and Jones required him to prove that, but for Millspaugh's and Jones's alleged actions, he would have been granted tenure. In *Kesler I*, however, the court necessarily and unambiguously found that the research misconduct committee's findings -- not Millspaugh's and Jones's alleged actions -- caused the denial of Kesler's tenure. These findings precluded Kesler from relitigating

causation, an essential element of his tortious interference claim against Millspaugh and his prima facie tort claims against Millspaugh and Jones.

(4) The circuit court did not err in entering summary judgment in favor of Millspaugh, Ryan, and Jones on Kesler's civil conspiracy claim against them. The pleaded basis for Kesler's civil conspiracy claim was his prima facie tort claim. Because res judicata and collateral estoppel barred Kesler's prima facie tort claim, his civil conspiracy claim necessarily failed.

Opinion by: Lisa White Hardwick, Judge

**April 18, 2017**

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